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December 3, 2001

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20544

Re: Cross-Ownership of Broadcast Stations  
and Newspapers  
MM Docket No. 01-235 /

Dear Ms. Salas:

Transmitted herewith on behalf of Hearst-Argyle Television, Inc. are an original and four copies of Comments to be filed in the above-captioned proceeding.

If you should have any questions in connection with this matter, it is respectfully requested that you communicate with this office.

Very truly yours,

Wade H. Hargrove

Enclosures

cc: Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Mr. Kenneth Ferree  
Mr. Roy J. Stewart

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Before the  
Federal Communications Commission  
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| In the Matter of                          | ) |                      |
|   | ) |                      |
| Cross-Ownership of Broadcast Stations and | ) | MM Docket No. 01-235 |
| Newspapers                                | ) |                      |
|   | ) |                      |
| Newspaper/Radio Cross-Ownership           | ) | MM Docket No. 96-197 |
| Waiver Policy                             | ) |                      |

To: The Commission

**COMMENTS OF HEARST-ARGYLE TELEVISION, INC.**

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December 3, 2001

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## Table of Contents

|  |                  |
|--|------------------|
| Summary .....  | iii              |
| I. Statement Of Interest .....   | 1                |
| II. The Newspaper/Broadcast Cross-Ownership Rule Should Be Repealed .....  | 2                |
| III. New Data Reflect The Extent Of Diversification Of Ownership And Voices In Local Markets .....   | 5                |
| IV. Local Media Markets Are Highly Competitive, And Cross-Ownership Has Been Shown To Benefit Both Consumers And Advertisers And To Promote—Rather Than Impair—Competition ..... | 10               |
| V. Fears Of A Local Media Oligopoly Are Unfounded; Instead, The Market Should Be Unleashed To Provide New Opportunities For Innovative Media Products And Voices .....           | 16               |
| Conclusion .....   | 18               |
| Selected Media “Voices” by Designated Market Area .....  | <i>Exhibit 1</i> |
| Average “Voices” for Selected Media by DMA Tranch .....  | <i>Exhibit 2</i> |

## Summary

The newspaper/broadcast cross-ownership rule is antithetical to competition in a free market, stifles innovation in a world of media convergence, and may actually hinder the expression of diverse viewpoints. Accordingly, the rule should be repealed.

The rule was adopted more than a quarter of a century ago and, even then, was premised on the *supposition*—not on *evidence*—that the restriction was necessary to protect competition and assure viewpoint diversity in local media markets. Indeed, in adopting the rule, the Commission did *not* find a pattern of specific abuses, did *not* find that the existing combinations generally were harmful to competition, did *not* find such combinations necessarily spoke with one voice, and did *not* find that the existing combinations had failed to serve the public interest. Rather, the Commission adopted the rule in the belief that it might “possibly” enhance viewpoint diversity.<sup>1</sup>

To document the extensive diversity of viewpoint and owners in *local* media markets, Hearst-Argyle conducted a comprehensive examination of traditional media “voices” in each of the nation’s 210 Designated Market Areas (“DMAs”) (*see* Exhibit 1). In the aggregate, this study identified more than 17,000 (17,049) total local “voices” among these media for which there are 8275 separate owners (i.e., approximately half (48.5%) of all of these media outlets are owned by separate owners). On average, each DMA is home to 81 traditional media “voices” for which there are 39 separate owners (*see* Exhibit 2). In the top 100 markets, there are, on average, 118 media “voices” for which there are 57 separate owners. In the top 50 markets, there are, on average, 141 media “voices” for which there are 68 separate owners. In the top 25 markets, there are, on average, 167 media “voices” for which there are 79 separate owners. Even in the smallest markets, such as

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<sup>1</sup> *See FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 786 (1978).

markets 151-200, there are, on average, nearly 40 media “voices” for which there are 20 separate owners. And these traditional media “voices” do not take into account the multitude of “voices” available via the Internet, weekly newspapers, low power radio, local cable news channels, multiplexing by digital television stations, and other media.

The “average” DMA contains 39 traditional media “voices” owned by separate owners. Were a newspaper to combine with a broadcast station in an “average” DMA, there would still remain 38 separate owners of traditional media “voices” in such a DMA. Indeed, even if every newspaper whose circulation exceeds 5% were to combine with a broadcast station in the smaller markets 151-200, there would remain, on average, 18 separate owners of traditional, local media “voices.”

The factual evidence is compelling. The magnitude of the growth of *local* media demonstrates that there can be no harm to viewpoint diversity if cross-ownership were permitted. In other words, there is simply no appreciable loss in local viewpoint diversity if a newspaper and a local broadcast station were to combine.

A canvass of the economic analyses of competition in the advertising markets in which local broadcast stations and newspapers compete likewise shows that repeal of the cross-ownership prohibition will not adversely affect competition. To the contrary, the evidence points to significant benefits to both consumers and advertisers—higher circulation rates, more editorial content, and more advertising content—should newspaper/broadcast cross-ownership be permitted. In fact, the evidence shows that, where broadcast stations and newspapers compete for advertising dollars—that is, where the product market includes advertising across these different media—a merged entity, due to intense competition, will have insufficient market power to raise advertising rates. And,

obviously, where broadcast stations and newspapers do not materially compete for advertising dollars—for example, for help-wanted classified advertising—a merged entity could not possibly acquire any additional market power to enable it to raise advertising rates in either medium.

Finally, the fears of those opposed to repeal, viz. that a local media oligopoly will ensue, are unfounded. There is no evidence that common ownership of co-located broadcast stations and newspapers results in less editorial or journalistic autonomy. Rather than succumbing to unfounded fears or merely relying on supposition, the Commission should unleash the market's competitive forces to provide new opportunities for innovative local media products and voices. Repeal of the rule will produce economic efficiencies, including those relating to cross-marketing, cross-branding, and cost-sharing of certain administrative and overhead expenses. Repeal would also permit the purchase of a weak outlet, thereby preventing the loss of a significant platform. Perhaps most significantly, repeal would permit a common owner to concentrate on developing synergies, such as 24-hour news delivery systems that focus on *local issues and content*.

In its original report adopting the current newspaper/broadcast cross-ownership rule, the Commission recognized that it is “obliged to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation as it *is*, not *was*.”<sup>2</sup> Now—a quarter century later—it is self-evident that the newspaper/broadcast cross-ownership rule is contrary to the public interest. It is time to reach a different conclusion about the wisdom, efficacy, and necessity of the rule. For the reasons stated, logic, the law, and sound public policy compel the rule's repeal.

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<sup>2</sup> Multiple Ownership of Standard, FM and Television Broadcast Stations, *Second Report and Order*, 50 FCC 2d 1046 (1975), at ¶ 100 (emphasis added).

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| Newspapers                                | ) |                      |
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| Newspaper/Radio Cross-Ownership           | ) | MM Docket No. 96-197 |
| Waiver Policy                             | ) |                      |

To: The Commission

**COMMENTS OF HEARST-ARGYLE TELEVISION, INC.**

Hearst-Argyle Television, Inc. (“Hearst-Argyle”), by its attorneys, submits these comments in response to the *Order and Notice of Proposed Rule Making* (“*Notice*”), FCC 01-262, released September 20, 2001, in the above-captioned proceeding. It is Hearst-Argyle’s contention that the current newspaper/broadcast cross-ownership rule is antithetical to competition in a free market, stifles innovation in a world of media convergence, and may actually hinder the expression of diverse viewpoints. Accordingly, the rule should be repealed.

**I. Statement Of Interest**

Hearst-Argyle currently owns or manages 29 television stations and two radio stations in geographically diverse markets. The company’s television stations reach approximately 17.5% of U.S. television households, making it one of the two largest television station groups not owned by a network, as well as one of the seven largest television groups overall as measured by audience delivered. Hearst-Argyle’s largest shareholder is Hearst Broadcasting, Inc., which, ultimately, is owned by The Hearst Corporation, a privately-held company with diverse media interests, including

newspapers, magazines, publishing, broadcasting, and cable television networks.<sup>1</sup>

## **II. The Newspaper/Broadcast Cross-Ownership Rule Should Be Repealed**

The newspaper/broadcast cross-ownership rule prohibits common ownership of a broadcast station and daily newspaper within the 2 mV/m contour of an AM station, the 1 mV/m contour of an FM station, or the Grade A contour of a television station.<sup>2</sup> The Commission adopted the rule in 1975 when the nature and number of local media outlets were significantly different than they are today.<sup>3</sup>

In adopting the rule, the Commission ordered divestiture of only 16 then-existing newspaper/broadcast combinations while it grandfathered approximately 370 of the approximately 380 existing newspaper/radio combinations and 72 of the 79 existing newspaper/television combinations<sup>4</sup>—in other words, the Commission grandfathered nearly all such combinations. Plainly, the cross-ownership ban was largely intended as a prophylactic measure. Indeed, in adopting the rule, the Commission did *not* find a pattern of specific abuses, did *not* find that the

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<sup>1</sup> The Hearst Corporation, on behalf of Hearst Newspapers, which publishes 12 daily newspapers located in both major and smaller markets, is filing separate comments.

<sup>2</sup> See 47 C.F.R. § 73.3555(d).

<sup>3</sup> See Multiple Ownership of Standard, FM and Television Broadcast Stations, *Second Report and Order*, 50 FCC 2d 1046, 32 Rad. Reg. 2d (P & F) 954 (“*Second Report and Order*”), recon., 53 FCC 2d 589, 33 Rad. Reg. 2d (P & F) 1603 (1975) (“*Reconsideration Order*”), *aff’d sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) (“*NCCB*”).

<sup>4</sup> See *Reconsideration Order* at ¶ 2 (stating that “[s]even television stations and nine radio stations were affected by the divestiture requirement” because the harm to competition in those circumstances was believed to be “egregious”); *Second Report and Order* at ¶ 112 n.29 (stating that as of July 1974 there were 79 newspaper/television combinations); Newspaper Association of America, Petition for Rule Making (filed Apr. 28, 1997), at 10 (estimating the number of newspaper/radio combinations existing at the time of adoption of the newspaper/broadcast cross-ownership rule as 380).

existing combinations generally were harmful to competition, did *not* find such combinations necessarily spoke with one voice, and did *not* find that the existing combinations had failed to serve the public interest.<sup>5</sup> Instead, the Commission adopted the restriction in the belief that “diversification of ownership would *possibly* result in enhanced diversity of viewpoints.”<sup>6</sup> Thus, the rule was premised, not on facts or evidence, but, rather, on supposition.

When adopting the rule, the Commission recognized that it is “obliged to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation as it *is*, not *was*.”<sup>7</sup> Moreover, the Commission acknowledged that the policy that best serves the public interest is not necessarily static and that the Commission cannot be “excused from its continuing responsibility to seek to further the public interest which may cause it to reach a different conclusion.”<sup>8</sup> Ironically—indeed, prophetically—the Commission acknowledged at the time that it adopted the rule that “twenty-two years later” it might reach just such a different conclusion.<sup>9</sup>

It is now twenty-six years later. It is time to reassess the wisdom, efficacy, and necessity of the rule in light of the changes—in terms of media diversity and competition—that have occurred in local media markets since the rule’s adoption.

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<sup>5</sup> See *Second Report and Order* at ¶¶ 99-117; see also *NCCB*, 436 U.S. at 786. In fact, a Commission Staff study found that, “on the average, co-located newspaper-owned TV stations programmed 6% more local news, 9% more local non-entertainment, and 12% more total local [content] including entertainment than do other TV stations” and that these differences were statistically significant. *Second Report and Order* at App. C.

<sup>6</sup> *NCCB*, 436 U.S. at 786 (emphasis added).

<sup>7</sup> *Second Report and Order* at ¶ 100 (emphasis added).

<sup>8</sup> *Id.* at ¶ 20.

<sup>9</sup> *Id.*

In recognition of these changes, Congress, in adopting the Telecommunications Act of 1996, expressly directed the Commission to determine whether all of its rules—including this rule—are “necessary in the public interest as the *result of meaningful economic competition*.”<sup>10</sup> The *Notice* documents many of the changes that have occurred over the last 26 years on a *national* basis<sup>11</sup>:

- ▶ a 66.1% increase in the number of radio stations;
- ▶ a 76.3% increase in the number of full power television stations (not to mention the more than 2600 new low power and Class A television stations);
- ▶ a 35.8% decline in prime time audience share of all commercial television stations;
- ▶ a 19.0% decline in the number of daily newspapers;
- ▶ a 7.9% decline in total circulation of daily newspapers;
- ▶ a 127.3% increase in the circulation of weekly newspapers;
- ▶ a 418.5% increase in the percentage of television households served by cable; and
- ▶ the totally new development of DBS, other MVPDs, and the Internet.

Chairman Powell recently issued a challenge to name an era in history that has had more local media diversity than now:

Which is it that we’re recalling that was so much more diverse?  
When the 3 networks controlled every channel Americans saw?  
Today, we’ve gone from 3 networks to 7—and 9 if you count the  
Spanish-language networks. At the local station level we have a  
greater number of outlets than had []ever existed before in both radio  
and television. Cable channel capacity, the average system in  
America, has 56 channels or more and passes 98% of the homes in

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<sup>10</sup> 47 U.S.C. § 161(a)(2) (emphasis added); *see also* Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56 (1996).

<sup>11</sup> *See Notice* at ¶¶ 9-12.

the United States[,] and 2 of 3 of every new subscriber[] purchases DBS, which goes up to 300 and 400 channels.<sup>12</sup>

Given both the increase in local outlet diversity and competition as well as the shift to alternative forms of local media that are qualitatively different than those existing in 1975 (e.g., the explosive increase in the circulation of weekly newspapers and the number of cable systems and cable channels, satellite companies and satellite channels, and new media), it is clear that there is no longer any rational basis on which the newspaper/broadcast cross-ownership restriction can be sustained. The regulatory *supposition* on which the restriction was originally predicated has been subsumed by the explosive growth and diversity in the nation's 210 local media markets. Accordingly, Hearst-Argyle respectfully submits that the rule should be rescinded.

### **III. New Data Reflect The Extent Of Diversification Of Ownership And Voices In Local Markets**

The *Notice* discusses the increase over the last quarter century in the diversity of media voices on a *national* basis. However, *national* statistics do not fully capture the growth that has occurred in the diversity of owners and voices in *local* markets. To assist the Commission in assessing the extent of ownership diversity and competition in *local* markets, Hearst-Argyle has prepared a comprehensive database of media "voices" in each of the nation's 210 Designated Market Areas ("DMAs"). These data are summarized in the table attached as Exhibit 1.

For each DMA, Hearst-Argyle has examined the total number of full power television stations (excluding satellite and DTV stations) and the number of separate owners of those full

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<sup>12</sup> Valerie Milano, *FCC's Powell Sees Big Change in Broadcast Environment*, 21 COMM. DAILY, No. 205 (Oct. 23, 2001) (quoting Chairman Powell from speech to Hollywood Radio & Television Society).

power television stations<sup>13</sup>; the total number of low power television and Class A stations that originate programming and the number of separate owners of those stations; the total number of radio stations in each DMA and the number of separate owners of those radio stations; the total number of daily newspapers of general circulation in each DMA, the number of those newspapers whose circulation exceeds 5% of the total television households in the DMA, and the number of separate owners of those newspapers whose circulation exceeds 5%; the general availability of cable in each market and the extent to which the Commission has found effective competition to exist to cable in each DMA; and those DMAs in which DBS providers now have local uplink satellite facilities and currently provide local-into-local service.<sup>14</sup> In addition, Hearst-Argyle has calculated the number of total “voices” of all of these media that are present in each DMA. Then, as an analog to the Commission’s “independently owned media voices” count pursuant to the radio/television cross-ownership rule, 47 C.F.R. § 73.3555(c), Hearst-Argyle has further determined the total number

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<sup>13</sup> The number of separate owners in each medium means, in this context, those media outlets (be they television stations, radio stations, or newspapers) that either BIA MEDIA Access Pro Database (television and radio) or Bacon’s MediaSource Internet Database (newspapers) show not to be under common ownership or control for that medium in a given DMA. In other words, in examining the number of separate owners of full power television stations in a market, no attempt is made to account for cross-ownership with another medium, such as radio or newspapers. For example, if Viacom/CBS owns two television stations in a DMA and Viacom/Infinity owns two radio stations in the same DMA, then the two television stations are counted only once for that DMA, as there is only one separate television station owner, and the two radio stations are also counted only once for that DMA, as there is only one separate radio station owner. The radio/television cross-ownership in that market, however, is properly accounted for in the “Total ‘FCC Voices’” column of Exhibit 1, where it is only counted once.

<sup>14</sup> DMAs in which DBS providers have uplink facilities by which the DBS providers are offering local-into-local service are counted because, while the DBS providers have chosen to use those facilities to uplink local broadcast stations, there is no reason why they could not, instead, choose to originate local programming—thus, these local DBS facilities should be and are counted as local “voices.”

of separate owners (serving as the proxy for independent “voices”) of full power television stations, radio stations, newspapers whose circulation exceeds 5%, and generally available cable systems in each DMA, taking into account, as well, the relevant number of radio/television, newspaper/radio, and newspaper/television combinations in each DMA.

A description of the limitations necessarily inherent in the statistical data is provided as “Notes and Limitations” at the end of Exhibit 1. It is, of course, necessary to apply the same caveat to these data as the Commission did when it attempted to identify just the newspaper/broadcast combinations in 1975: “While we are reasonably sure about the information in question, absolute certainty is not possible.”<sup>15</sup>

In the aggregate, Hearst-Argyle has identified more than 17,000 (17,049) local media “voices” in total for which there are 8275 separate owners (i.e., approximately half (48.5%) of all of these media outlets are owned by separate owners).<sup>16</sup> On average, each DMA is home to 81 traditional media “voices” for which there are 39 separate owners (*see* Exhibit 2). In the top 100 markets, there are, on average, 118 media “voices” for which there are 57 separate owners. In the top 50 markets, there are, on average, 141 media “voices” for which there are 68 separate owners.

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<sup>15</sup> *Second Report and Order* at ¶ 113 n.32. While multiple sources of data have been cross-checked against one another, absolute certainty would require perfect knowledge of all ownership information contained in every ownership report on file with the Commission, and, even then, the data would, of necessity, need to be updated daily.

<sup>16</sup> Within the limitations of the source data, Hearst-Argyle found there to be, in the aggregate, 242 radio/television combinations (of which approximately half are NCE combinations), 26 co-located combinations of a television station commonly-owned with a newspaper whose circulation exceeds 5% of the DMA households, and 19 co-located combinations of a radio station or radio stations commonly-owned with a newspaper whose circulation exceeds 5% of the DMA households. These cross-media combinations are accounted for in the figure given for “FCC ‘voices.’”

In the top 25 markets, there are, on average, 167 media “voices” for which there are 79 separate owners. Even in the smallest markets, such as markets 151-200, there are, on average, nearly 40 media “voices” for which there are 20 separate owners.

For the first time, as far as Hearst-Argyle can determine, this summary provides a measure of the type and number of local media outlets and separate owners of local media outlets in each DMA. This empirical data is important to the Commission’s analysis of the extent of diversity and competition in local media markets. It shows clearly that the newspaper/broadcast cross-ownership prohibition is no longer necessary to ensure the Commission’s public interest goal of assuring viewpoint diversity and competition in the nation’s local media markets.

Even so, the Commission’s listing of national aggregate numbers of media outlets and Hearst-Argyle’s showing of local media diversity and competition do not—and cannot—reflect the totality of diversity of local “voices.” For example, the Commission’s and Hearst-Argyle’s media counts do not reflect

- ▶ the development of multiplexing by local digital television stations;
- ▶ the hundreds of construction permits which have already been granted for LPTV stations, Class A television stations, and radio stations;
- ▶ the development of hundreds of new LPFM radio stations, which are quintessentially local;
- ▶ the market entry of XM Satellite Radio and Sirius Satellite Radio, both of which will offer 100 new channels of service nationwide, including many dedicated exclusively to news and talk;
- ▶ the thousands of radio stations available on the Internet, plus all the Internet-only “stations”;
- ▶ the nearly eight thousand weekly newspapers;
- ▶ the thousands of college, foreign language, and other specialty newspapers

that are not included in traditional aggregations of daily and weekly newspapers;

- ▶ the numerous, but difficult to count, alternative and underground local “zines”; or
- ▶ the continuing development of new local and regional 24/7 cable news channels, including in medium-sized markets such as Austin, Texas, which focus exclusively on local content in direct competition with local broadcasters and newspapers.

Equally important to the unprecedented growth in local media voices is the development of new media, particularly wire and wireless interactive services, which has made it possible for every aspiring local *speaker* to have access to the means of mass communication. Speaker access in these new media comes at a lower price, in real terms, than in the traditional media and offers, as well, the potential to reach a wider audience.

In short, the magnitude of the growth of *local* media demonstrates that there would be no harm to viewpoint diversity or competition if cross-ownership were permitted. In other words, there would be no appreciable loss of local viewpoint diversity or competition if a newspaper and local broadcast station were to become commonly owned. The “average” DMA contains 39 media “voices” owned by separate owners. Were a newspaper whose circulation exceeds 5% to combine with a broadcast station, there would still be 38 separate owners of media “voices” left in an “average” DMA. The average top 50 DMA contains 68 media “voices” owned by separate owners. A merger of a newspaper and broadcast station in an average top 50 market, therefore, would still leave 67 separate owners of media “voices.” In fact, even if *all* the newspapers whose circulation exceeds 5% in a top 50 DMA<sup>17</sup> were to merge with broadcast stations in that DMA, there would still

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<sup>17</sup> On average, there are two such newspapers whose circulation exceeds 5% of the  
(continued...)

remain, on average, 66 “voices” owned by *separate* owners. The result would be similar in virtually any DMA, because, on average, there are only two newspapers in each DMA whose circulation exceeds 5%, and, if each such newspaper were to become combined with a local broadcast outlet, the number of separate owners of media “voices” would, accordingly, only be reduced by two, on average. Thus, if the newspapers whose circulation exceeds 5% merged with local broadcast outlets in markets 51-100, then, on average, there would still remain 42 separate owners of media “voices”; in markets 101-150, there would remain, on average, 28 separate owners of media “voices”; and even in markets 151-200, there would remain, on average, 18 separate owners of media “voices.”

The factual evidence is compelling. If every local daily newspaper in the nation whose circulation exceeds 5% should become commonly owned with a local broadcast station, there would remain in every market a multiplicity of local media “voices.” Accordingly, there would be no harm to competition nor an insufficiency of diverse voices in local media markets if the rule were repealed. The evidence now repudiates the supposition upon which the cross-ownership restriction was premised more than a quarter century ago.

#### **IV. Local Media Markets Are Highly Competitive, And Cross-Ownership Has Been Shown To Benefit Both Consumers And Advertisers And To Promote—Rather Than Impair—Competition**

The *Notice* correctly focuses on competition at the *local* level “because this is the marketplace with which the Commission’s newspaper/broadcast policies have been concerned”<sup>18</sup> and, in particular, on the local *advertising* market because this is the “primary economic market in

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<sup>17</sup>(...continued)  
households in each of the top 50 DMAs.

<sup>18</sup> *Notice* at ¶ 8.

which broadcast stations and newspapers may compete.”<sup>19</sup>

Various economic analyses of competition in the advertising markets in which local broadcast stations and newspapers may compete have differed in their determination of the relevant “product market” for purposes of determining the competitive effect of cross-media ownership in local markets. In particular, these analyses differ somewhat in their determination of substitutability of newspaper advertising and broadcast advertising. The Department of Justice, for example, tends, on a case-by-case basis, to treat radio advertising and newspaper advertising as discrete product markets,<sup>20</sup> and at least one independent economic analysis concurs that “radio advertising is a distinct antitrust market at the local level.”<sup>21</sup> But if newspaper advertising and broadcast advertising are, in fact, separate and discrete advertising markets, then there obviously would be no lessening of, or harm to, local competition if the newspaper/broadcast cross-ownership restriction were repealed, for, plainly, if newspaper advertising and broadcast advertising do not compete and are not substitutable, then there could be no adverse effect on competition if cross-ownership were permitted.

Other independent economic analyses, however, nearly uniformly show that newspaper advertising and broadcast advertising *are* economic substitutes for each another but that local advertising markets are intensely competitive.<sup>22</sup>

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<sup>19</sup> Notice at ¶ 19.

<sup>20</sup> See *United States v. Jacor Communications, Inc.*, 1996 WL 784589, \*10 (S.D. Ohio 1996) (radio); *Community Publishers Inc. v. Donrey Corp.*, 892 F. Supp. 1146, 1155-57 (W.D. Ark. 1995) (newspaper).

<sup>21</sup> Robert B. Ekelund, Jr., George S. Ford, & John D. Jackson, *Is Radio Advertising a Distinct Local Market? An Empirical Analysis*, 14 REV. OF INDUS. ORG. 239, 255 (1999).

<sup>22</sup> In fact, these analyses have been much more one-sided than the Notice implies. See Notice at ¶ 21 & n.69.

A study of local advertising markets undertaken last year by Ekelund, Ford, and Jackson concluded that radio and newspaper advertising are substitutes for television advertising<sup>23</sup> and that television advertising “is not, by itself, a distinct antitrust market at the local level.”<sup>24</sup> Another study last year by Seldon, Jewell, and O’Brien “found all advertising media are substitutes in promoting sales.”<sup>25</sup> Their study “found strong substitution possibilities from TV into both print and radio, from radio into both print and TV, and from print into radio.”<sup>26</sup> Seldon, Jewell, and O’Brien further concluded that

TV corporations currently lack market power in setting advertising rates, while print and radio media owners may have some market power. However, our estimated substitution elasticities suggest that such market power is, and is likely to remain, limited. More succinctly, the results of this study imply that mergers in the entertainment industry will not lead to significant market power in setting advertising rates.<sup>27</sup>

A 1993 study by Seldon and Jung also found fairly good substitutability among various media,

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<sup>23</sup> Robert B. Ekelund, Jr., George S. Ford, & John D. Jackson, *Are Local TV Markets Separate Markets?* 7 INT’L J. OF THE ECON. OF BUSINESS 79, 91 (2000).

<sup>24</sup> *Id.* at 92. This conclusion contrasts with an earlier study by these authors in which they concluded that “radio advertising is a distinct antitrust market at the local level” even though “television and newspaper advertising are substitutes for radio advertising.” Robert B. Ekelund, Jr., George S. Ford, & John D. Jackson, *Is Radio Advertising a Distinct Local Market? An Empirical Analysis*, 14 REV. OF INDUS. ORG. 239, 255, 254 (1999). Another recent study by two of these authors found that “newspapers and radio may be complementary forms of advertising rather than substitutes.” Robert B. Ekelund, Jr., George S. Ford, & Thomas Koutsy, *Market Power in Radio Markets: An Empirical Analysis of Local and National Concentration*, 43 J. OF LAW & ECON. 157, 178 (2000).

<sup>25</sup> Barry J. Seldon, R. Todd Jewell, & Daniel M. O’Brien, *Media Substitution and Economies of Scale in Advertising*, 18 INT’L J. OF INDUS. ORG. 1153, 1175 (2000).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 1176.

aggregating the advertising market as a whole.<sup>28</sup>

An earlier analysis by Ferguson, and the only one that has examined cross-ownership effects, found that common

ownership of a television station by a daily newspaper in the same market *significantly decreases daily newspaper milinch advertising rates* (rates per column inch per thousand circulation) *and significantly increases daily newspaper circulation*. Ownership of a radio station in the same market does not significantly decrease newspaper milinch advertising rates but does significantly increase daily newspaper circulation.<sup>29</sup>

Ferguson concluded that only a supply-side hypothesis of economies of scale, integration, and coordination could account for the benefits to advertisers and to consumers from newspaper/television cross-ownership. In particular, cross-ownership would permit “economies of size in news gathering, in securing advertising, in financing, and in management which lower average and marginal costs.”<sup>30</sup> Economies of integration and coordination would permit joint promotions to advertisers of both media and of the market in which they are located as well as

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<sup>28</sup> See Barry J. Seldon & Chulho Jung, *Derived Demand for Advertising Messages and Substitutability Among the Media*, 33 Q. REV. OF ECON. AND FIN. 71, 78, 82 (1993).

Once the local media market is split between local advertisers and national advertisers, disagreement on substitutability increases. Compare Leonard N. Reid and Karen Whitehill King, *A Demand-Side View of Media Substitutability in National Advertising: A Study of Advertiser Opinions about Traditional Media Options*, 77 JOURNALISM & MASS COMMUNICATION Q. 292 (2000) (concluding that advertising managers themselves view most media as substitutes for *national* advertising purposes) with John C. Busterna, *The Cross-Elasticity of Demand for National Newspaper Advertising*, 64 JOURNALISM Q. 346 (1987) (concluding that *national* advertisers do not consider newspapers to be much of a substitute for other media but not examining the local advertising market).

<sup>29</sup> James M. Ferguson, *Daily Newspaper Advertising Rates, Local Media Cross-Ownership, Newspaper Chains, and Media Competition*, 26 J. OF LAW & ECON. 635, 636 (1983) (emphasis added).

<sup>30</sup> *Id.* at 639.

reduced transaction costs to national advertisers using newspapers.<sup>31</sup> These various economic benefits would also redound to consumers in at least three important ways: first, by increasing retail advertising which would attract more readers “because people buy newspapers, in part, for the price information contained in retail advertising”<sup>32</sup>; second, by increasing the editorial content of newspapers through lower costs; and, third, by increasing circulation which gets this increase in advertising and editorial content into more consumers’ hands.

A 1993 study by Bates expressly considered the effects of concentration in local television markets on advertising *and* on audience. Bates concluded that studies that examine only the advertising market will result in too narrow of a definition of the relevant marketplace if, in fact, the impact of concentration on diversity in the marketplace of ideas and on the number of voices available in the market are of concern.<sup>33</sup> To focus only on advertising “would be to seriously *overestimate* the degree of concentration.”<sup>34</sup>

Taken together, these independent economic analyses may be summarized as follows<sup>35</sup>:

1. Newspapers, local television, and local radio are substitutes for one another for local advertisers and may be substitutes for one another for national advertisers. There is some evidence

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<sup>31</sup> See *id.* at 639 n.9.

<sup>32</sup> *Id.* at 640.

<sup>33</sup> See Benjamin J. Bates, *Concentration in Local Television Markets*, 6 J. OF MEDIA ECON. 3, 5, 7, 17 (1993).

<sup>34</sup> *Id.* at 17 (emphasis added). The reason why examining only the advertising market results in an overestimation of the degree of concentration in local media markets is because, as Bates found, new media, in bringing forth new competition, have created very close media product substitutes as adjudged by the user, which the advertising market alone does not and cannot capture.

<sup>35</sup> See *Notice* at ¶¶ 21, 23, 25-27, 29 (seeking comment on these various issues).

that newspapers and radio may be complementary forms of advertising, rather than substitutes.

2. Television advertising is not a distinct antitrust market at the local level.
3. Television stations lack market power to unilaterally increase advertising rates.
4. Cross-media mergers or acquisitions will not create sufficient market power to allow

the combined entity to increase advertising rates.

5. Considering only the advertising market will *overestimate* the already limited degree of concentration.

6. Newspaper/broadcast cross-ownership may benefit advertisers by increasing circulation. Newspaper/broadcast cross-ownership does no harm to advertisers as there is no evidence it would result in increased advertising rates.

7. Newspaper/broadcast cross-ownership may benefit consumers (i) by increasing editorial content, (ii) by increasing advertising content, and (iii) by increasing circulation.

In sum, there is *no* evidence of competitive harm that would result from allowing newspaper/broadcast cross-ownership. To the contrary, the evidence points to significant benefits to both advertisers and consumers should the restriction be repealed. In fact, the evidence shows that, because of the extent of competition in local media markets and because broadcast stations and newspapers compete against each other for advertising dollars—that is, the relevant product market includes advertising across these different media—a co-owned media outlet will not have sufficient market power to raise advertising rates. And, obviously, where broadcast stations and newspapers do not materially compete for advertising dollars—for example, for help-wanted classified advertising—a co-owned outlet would not acquire, as a result of its commonly-owned status, any additional market power to enable it to raise advertising rates in either medium.

As noted earlier, should the Commission conclude that newspaper advertising and broadcast advertising *are not* substitutes, then there would be no harm to competition if the cross-ownership restriction were rescinded. And, conversely, if the Commission should conclude that newspaper advertising and broadcast advertising *are* substitutes, then, because of the explosive growth in local media advertising outlets, repeal of the cross-ownership restriction likewise would not lessen or harm local competition.

Therefore, based on the economic evidence, the Commission's newspaper/broadcast cross-ownership prohibition should be repealed.

**V. Fears Of A Local Media Oligopoly Are Unfounded; Instead, The Market Should Be Unleashed To Provide New Opportunities For Innovative Media Products And Voices**

Opponents of repeal have previously suggested that the rule must be retained to assure local viewpoint diversity between local broadcast stations and newspapers. But this argument simply overlooks the evidence. Media companies that own both newspapers and broadcast stations often follow policies of editorial independence. Indeed, the evidence adduced to date does not suggest that common ownership of co-located broadcast stations and newspapers results in less editorial or journalistic autonomy. Quite simply, there is no evidence, let alone any *a priori* reason, to expect that repeal of the rule will result in a local media oligopoly that excludes contrasting local viewpoints.

Furthermore, the rule currently prevents both the purchase of a weak outlet, which otherwise could prevent the loss of a significant platform, as well as the purchase of a strong outlet, in which a common owner might immediately concentrate on developing synergies, such as a website that includes in-depth reporting on local news (via the newspaper's strengths) and accompanying video

clips (via the television station's strengths).<sup>36</sup> In addition, repeal of the rule could facilitate other economic benefits, such as cross-marketing, cross-branding, cost-sharing of certain administrative and overhead expenses, and—perhaps most significantly—the development of 24-hour news delivery systems that focus on *local issues and content*. Hearst-Argyle fully anticipates that repeal of the rule will generate growth in media markets generally, spur innovative cross-platform products and services, and stimulate the marketplace of ideas.

Moreover, just as the rule effectively and arbitrarily acts to prevent common owners of local media from delivering new voices to local markets, so, too, does the rule restrict the pool of potential owners of local media by excluding precisely those with the experience and interest who could invigorate competition in local markets. To illustrate, the rule typically prohibits co-ownership of a suburban newspaper and television station licensed to a community in a large metropolitan area—even if the circulation of the suburban newspaper is but a small fraction of the households in the market. Clearly, common ownership would pose no threat to competition in those circumstances, and, to the contrary, competition would likely be enhanced, as a more efficient owner would be able to compete more vigorously against other established local media interests.

In short, both because the cross-ownership prohibition actually frustrates competition and denies consumers the benefits of competition and because cross-ownership itself poses no real threat

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<sup>36</sup> Cf. Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MM Docket No. 01-317, *Notice of Proposed Rule Making and Further Notice of Proposed Rule Making*, FCC 01-329 (released Nov. 9, 2001), at ¶ 48 (observing that a combination involving a weak competitor may “intensif[y] rivalry with stronger competing stations that benefits both advertisers and listeners”); see also *id.* at ¶ 8 (noting that the Commission has previously “found that the inability of radio stations to realize the efficiencies arising from common ownership harmed diversity and competition by making it more difficult for radio stations to compete and to provide valuable programming services”).


to diversity, the rule should be eliminated.

### **Conclusion**

For the foregoing reasons, logic, the law, and sound public policy compel the conclusion that the newspaper/broadcast cross-ownership should be repealed.

Respectfully submitted,

**HEARST-ARGYLE TELEVISION, INC.**

  
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